

PAULA J. JONES

IBLA 76-162

Decided February 24, 1976

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing protest to the Bureau's delay in issuing a lease on successfully drawn simultaneous oil and gas lease offer CA 146.

Affirmed.

1. Environmental Quality: Environmental Statements -- Mineral Leasing Act: Environment -- National Environmental Policy Act of 1969: Environmental Statements -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Wildlife Refuges and Projects: Leases and Permits

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

APPEARANCES: John P. Moffitt, Esq., Jackson & Goodstein, Los Angeles, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE RITVO

Paula J. Jones, formerly known as Paula J. Safarik, appeals from the decision of July 22, 1975, by the California State Office, Bureau of Land Management, which dismissed her protest concerning her oil and gas lease offer CA 146.

The offeror under her maiden name, Paula J. Safarik, was the successful drawee for Parcel No. 17 in the January 1973 simultaneous filing drawing procedure. The lands are within the Temblor National Cooperative Land and Wildlife Management Area established by Public Land Order No. 2460 of August 11, 1961 (26 F.R. 7701). They are withdrawn from the operation of the nonmineral public land laws, but not from mineral leasing.

In response to a request for a report on surface management requirements, the Bakersfield District Office of the Bureau of Land Management on March 14, 1973, informed the California State Office that it had not developed an environmental analysis for the area but expected to do so in the near future, and recommended that no oil and gas leases be issued for lands in the area pending the results of the analyses. The State Office accordingly suspended further action on the offer pending preparation of the environmental analysis report.

On February 27, 1974, and again on November 20, 1974, the applicant requested the State Office to issue the lease because of inquiries by Tenneco Oil Company to whom she had agreed to assign a portion of the lease by letter agreement of February 21, 1973. In both instances she was informed that the environmental analysis had not been completed and that action would be taken on the application as soon as possible after receipt of the environmental report.

On August 1, 1975, she filed a protest objecting to the Bureau's failure to issue a lease to her for 2 1/2 years since the drawing despite her repeated requests. By its decision of July 22, 1975, the California State Office dismissed the protest and this appeal followed.

Appellant's major contention is that she is qualified to hold a lease and was awarded priority in the drawing and, therefore, the mandatory provisions of 30 U.S.C. § 226(c) (1970) require that the lease be issued to her. This section states:

(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. \* \* \* [Emphasis added by appellant.]

[1] This contention is without merit. Issuance of noncompetitive oil and gas leases is discretionary with the Secretary of the Interior. The decision below correctly pointed out that

a first qualified applicant has no right to a lease, quoting the following from Lloyd W. Levi, 19 IBLA 201 (1975):

The law is well-settled that if an oil and gas lease is to be issued for a particular tract, it must be issued to the qualified person who first applied. The Department, however, has plenary discretion to refuse to issue any lease at all for such tract. Udall v. Tallman, 380 U.S. 1 (1965), rehearing denied, 380 U.S. 989 (1965). The filing of a noncompetitive oil and gas lease offer does not generate any legal interest, Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966), other than the preference right accorded to the first qualified applicant. Even where an applicant is the first-qualified applicant the Department retains its discretion to reject his application. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). An applicant has no right to compel a lease under the Mineral Leasing Act, Pease v. Udall, 332 F.2d 62 (9th Cir. 1964).

We have also held that the drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing procedure creates no vested rights in the offeror. Donald Reese, 15 IBLA 101 (1974); Silver Monument Minerals, Inc., 14 IBLA 137 (1974); also see Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974). The Department has upheld the dismissal of protests by successful drawees in simultaneous oil and gas drawings against cancellation of the drawings because offers had been erroneously omitted, and against the holding of second drawings. Herman A. Keller, supra; R. E. Puckett, A-30419 (October 29, 1965); cf. Craig Martin, 6 IBLA 37 (1972).

Appellant states that by virtue of its long delay in issuing the lease to her, it would appear that the Bureau has allowed the Environmental Protection Policy Act of 1969, 42 U.S.C. § 4331 (1970), to bring its operations to a standstill and, in effect, to preempt its operations under the Mineral Leasing Act. While there is no doubt that the Act has had a considerable impact on the Bureau's mineral leasing program, nevertheless the Secretary of the Interior is obligated to support and implement the national policy expressed by Congress in that Act. A. Helander, 15 IBLA 107 (1974), and cases cited therein. Public Land Order 2460 indicated that the Temblor National Cooperative Land and Wildlife Area is to "be managed by the Bureau of Land Management for the development, conservation, utilization, and maintenance of their natural resources, including their recreational and wildlife resources." We see no reason, therefore, to question the Bureau's determination that an environmental analysis is necessary to consider whether a lease should be issued in the area and, if so,

what, if any, stipulations may be necessary to protect the environment.

Appellant states that the lands should not have been included in the list of lands available for leasing under the circumstances, 1/ and that as a result of the long delay in issuing the lease, Tenneco Oil Company has advised her that it wishes to be relieved of its obligation to purchase the lease. Although the circumstances in this case are regrettable, they do not justify the issuance of a lease in derogation of the Secretary's obligation to support the policy expressed in the Environmental Protection Policy Act of 1969.

Appellant also states that the Bureau has issued five leases from August 1973 to the present in the area adjacent to the lands in her offer, and she contends that administrative standards must be uniformly applied in individual cases, citing Environmental Defense Fund, Inc. v. Ruckelshaus, 439 F.2d 584, 596 (1971). In transmitting the appeal to this Board, the California State Office noted that the lease never issued in one of the five cases designated by appellant as the offer was withdrawn, and that the remaining four leases are all outside of the Temblor National Cooperative Land and Wildlife Management Area, which is the critical area.

Three years have now elapsed since the drawing. If appellant no longer wishes to obtain a lease, she may withdraw the offer before the lease is executed by the authorized officer of the Bureau and her advance rental payment will be refunded. If, on the other hand, she is still interested in a lease, she must await the completion of the Bureau's study.

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1/ In transmitting the appeal and case record to this office, the California State Office acknowledged that it is better to make the environmental analysis before the lands are offered for simultaneous filings of lease offers. It stated that, although this procedure was not used when the subject lease offer was filed, it is the procedure now used in that office, referring to Instruction Memorandum No. 73-81, dated February 22, 1973, from the Associate Director of the Bureau of Land Management, making certain changes in the preparation and distribution of the monthly simultaneous oil and gas lists. The memorandum states, inter alia, that: "No land will be posted to the list until an appropriate environmental analysis has been made and the need for stipulations (standard or special) relating to surface use and protection has been determined."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

